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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,857	03/26/2004	Thomas Gottemoller	030939	7118
41835	7590	01/09/2006	EXAMINER	
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP HENRY W. OLIVER BUILDING 535 SMITHFIELD STREET PITTSBURGH, PA 15222			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,857	GOTTEMOLLER, THOMAS	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10/14/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 102-143, 156-189 and 193-200 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 102-143, 156-189 and 193-200 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I in the paper filed 10/14/05 and attempt to make an election from subsequent species therein is acknowledged and appreciated. However, the Examiner disagrees with the species election, and because of the complexity of the species restriction, claim amendment, and large number of claims, this second Restriction Requirement is set forth.

The instant claims are all drawn to a product invention as follows:

- I. Claims 102-143, 156-189, and 193-200, drawn to a grain fiber or food containing same, classified in class 426, subclass 634.

These claims are directed to the following patentably distinct species of the claimed invention.

Species group one:

- A. Soya Fiber (claims 102-143, and 156-174)
- B. Flax*
- C. Sunflower
- D. Rice
- E. Canola
- F. Corn
- G. Wheat
- H. Rapeseed
- I. Lupin

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* Species B-I involve claims 176, 184, and 195.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from the above grouping for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 175, 177-183, 185-189, 193, 194, and 196-200 are generic with respect to this grouping.

After making the above species election, the claims are directed to the following patentably distinct species (slightly modified from the previous restriction requirement) relating to the form of product containing the grain material (which involve the Markush groupings of claims 126, 157, 183, and 194 along with additional claims as specified below).

Species group two:

- a. Beverage, milk product, simulated milk product (claims 127, 128, 158, and 159)
- b. Dry mix
- c. Tofu
- d. Miso
- e. Topping
- f. Infant food
- g. Dessert
- h. Snack
- i. Flour product
- j. Meat food product and simulated meat product (claim 129, 160)
- k. Pet food product.

Because of the change in the claims and grouping of species above, Applicants may desire electing a different species grouping. However, based on Applicant's election regarding the last Restriction Requirement (i.e. the soya fiber species and then further limited to the beverage species), such election would now encompass claims 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194, and 196-200 wherein claims drawn to the non-soy fiber Markush groups (claims 176, 184, and 195) and those specifically drawn only to the meat/simulated meat product (claims 129, 160) would be excluded. Note also that claims 127, 128, 158, and 159 would be limited to the elected beverage species (i.e. beverage, milk product, simulated milk product).

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier

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Primary Examiner
Art Unit 1761

Anthony Weier
January 4, 2006



1/4/06

A handwritten signature in black ink, appearing to read "Weier". Below the signature is a date written vertically: "1/4/06".